

Filed for intro on 02/22/95  
Senate Bill \_\_\_\_\_  
By \_\_\_\_\_

House No. HB1358  
By Buck

AN ACT to enact the "Tennessee Comparative Fault Act.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This chapter may be cited as the "Tennessee Comparative Fault Act."

SECTION 2. As used in this chapter:

(a) "Fault" includes acts or omissions that are in any measure negligent or reckless toward the person or property of the actor or others, or that subject a person to strict tort liability. The term also includes breach of warranty, unreasonable assumption of risk not constituting an enforceable express consent, misuse of a product for which the defendant otherwise would be liable, and unreasonable failure to avoid an injury or to mitigate damages. Legal requirements of causal relation apply both to fault as the basis for liability and to contributory fault.

(b) "Party" includes any plaintiff, defendant, third party defendant or nonparty as defined in Section 2(c). For purposes of this chapter, a party may be treated with another party as a single party for purposes of allocating fault where recovery is sought against that party not based upon his alleged act or omission but based upon his relationship to the other party.

(c) "Nonparty" means a person or entity who is, or may be, at fault but who is not joined in the action or who has previously been dismissed from the action.

SECTION 3. In an action based upon fault, seeking to recover damages for injuries or death to person or harm to property, any contributory fault chargeable to the plaintiff diminishes proportionately the amount awarded as compensatory damages, but does not bar recovery except as provided in Section 4.

SECTION 4. In an action based on fault, plaintiff's contributory fault shall bar recovery for damages resulting from personal injury, wrongful death or damage to property if the plaintiff's fault was equal to or greater than the combined fault of all other parties as defined in Section 2(b).

SECTION 5.

(a) In an action based on fault that is tried to a jury, the jury shall determine its verdict in the following manner:

(1) The jury shall determine the percentage of fault of each party as defined by Section 2(b). The percentages of fault shall total one hundred percent (100%). In determining the percentages of fault, the trier of fact shall consider both the nature of the conduct of each part and the extent of the causal relation between the conduct and the damages claimed. Assessments of percentages of fault for nonparties are used only as a vehicle for accurately determining the fault of the named parties. Assessment of fault against nonparties does not subject any nonparty to liability in this or any other action, and it may not be introduced as evidence of liability in any action.

(2) If the percentage of fault of the plaintiff is fifty percent (50%) or greater of the total fault, the jury shall return a verdict for the defendant(s) and no further deliberation of the jury is required.

(3) If the percentage of fault of the plaintiff is less than fifty percent (50%) of the total fault, the jury shall determine the total amount of damages each plaintiff would be entitled to recover without regard to the fault of any party.

(4) The court shall enter a verdict against any defendant against whom fault was assessed by multiplying the total damages recoverable by the plaintiff by the percentage of each defendant's fault, and that amount is the maximum recoverable against each defendant.

(b) In an action based on fault that is tried by the court without a jury, the court shall make its award of damages according to the principles in subsection (a).

SECTION 6. In an action based upon fault for damages for personal injury, property damage, or wrongful death, the liability of each defendant for damages is several only and is not joint, except as otherwise provided in this section. Each defendant is liable only for the amount of damages allocated to that defendant in direct proportion to that defendant's percentage of fault, and a separate judgment shall be entered against the defendant for that amount.

The liability for each defendant is several only and not joint except that:

(1) A defendant is responsible for the fault of another defendant, or for payment of the proportionate share of another defendant if both defendants were acting in concert or if a defendant was acting as an agent or servant of the defendant. "Acting in concert" means pursuing a common plan or design to commit a tortuous act and actively taking part in it.

(2) Nothing in this section prohibits the imposition of joint and several liability in a cause of action relating to hazardous wastes or substances or solid waste disposal sites.

SECTION 7. A release, settlement, covenant not to sue, or similar agreement entered into by a plaintiff and a party discharges that party from all liability to the plaintiff or any other tortfeasor, but does not discharge any other parties liable upon the same claim unless it so provides.

SECTION 8. This act shall take effect upon becoming a law, the public welfare requiring it.

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